THE POWERS OF THE INTERSTATE COMMERCE COMMISSION.

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In the spring of 1887 Congress enacted what is entitled "An Act to Regulate Commerce," and what was intended to be a law for the correction of abuses in interstate railway transportation. That act created a commission, called the Interstate Commerce Commission, charged with the duty of executing its provisions. The law having been enacted, and a tribunal for its enforcement created, the subject apparently dropped from public attention.

That the law has effected much good, abundantly appears from a comparison of the condition of things as developed upon the hearings before Congress which led up to the passage of the act with the conditions of to-day. Many evils, however, have not been corrected; in some instances they have perhaps been even aggravated. In some respects the law possibly bears too severely upon the carriers. Decisions of the Supreme Court of the United States within the year have determined that the Commission did not possess powers of the most vital consequence, which it had assumed to exercise from the first.

From all this it had in the fall of 1897 become evident that in the interest of both the railways and the public this law must be revised. The railways already had before Congress certain important amendments to the act which they were urging with great insistence. With a view to presenting the side of the public as well, so that Congress might have before it the claims of all the parties, the Commission in its Eleventh Annual Report endeavored to explain the present condition of this law and to point out

the amendments which were necessary to secure to the public the benefits contemplated by the original act.

The recommendations of that report have been most bitterly assailed. Joseph Nimmo, Jr., LL. D., one time Chief of the Division of Internal Commerce in the Treasury Department at Washington, has declared that the suggestions of the Commission amount to "unmitigated governmental imperialism of the populistic type." Mr. Aldace F. Walker, a former member of the Interstate Commerce Commission, and now a very potent authority in railway matters, asserts in a pamphlet recently published that "the powers outlined in the report . . . cover all that the wildest advocate of a bureaucratic system could desire," and are "the most enormous ever conceived by the human intellect." These statements have been reiterated by many lesser lights and have been widely copied in the newspaper press. From all this has grown an impression in certain quarters that the suggestions of the Commission are in fact un-American in principle and impracticable in application, and that the Commission has sought to grasp an autocratic power far beyond the scope of the original act. Many people who believe firmly in the interstate regulation of railways and in the act to regulate commerce feel that to pass the Cullom bill, which embodies in the main the recommendations of the report, would be going too far.

The thing specially animadverted upon by Mr. Walker and Dr. Nimmo, and especially obnoxious to the railway interests, is what they term "the rate making power." It is gravely said that nothing less than the power to make all interstate railway rates is aimed at, and that to grant this "revolutionary" authority would be to paralyze commerce and "threaten all energy and enterprise."

The best answer to all this is the report of the Commission itself, in which these matters are fully discussed. Nobody reads, however, a government report; and hence I wish to state here, without any attempt at elaboration, just what the Commission has asked for in respect to rates, just why it is asked for, and just how that power compares with that exercised by the Commission in the past.

Mr. Walker and Dr. Nimmo assert that the Commission is seeking the full rate-making power. I deny that any rate-making power, in the proper and ordinary acceptation of that term, is sought. Fortunately, however, there is no need in this instance

to rely upon the statement of anybody. What word properly expresses the thing asked for may be matter of discussion. The thing itself is not, and any person of ordinary intelligence can understand what that thing is.

Let me illustrate by an actual example. The case which I have selected for that purpose is entitled "Grain Shippers' Association of Northwest Iowa vs. the Illinois Central Railroad Company and Others." It differs in no respect from many other cases now pending, except that certain of the complainants have sought relief in the courts, so that this case in its various phases presents the question more completely than most.

The complainant in the case is a voluntary association of persons interested in the shipment of grain from Northwestern Iowa and that vicinity; and the complaint attacks the reasonableness of the rates on grain from that section to Chicago. For the present purpose Sioux City may be taken as representing this section, and the rate from Sioux City as representing the rate from the whole section, although in point of fact all the rates are not the same. The tariff rate on wheat from Sioux City to Chicago is, or was, 22 cents per hundred pounds. The complainants say that anything in excess of 17 cents per hundred pounds is an unreasonable charge, and therefore in violation of the law.

In order to understand just the manner in which this so-called rate-making power is to be used by the Commission, it is necessary to understand the history of a proceeding in which it is to be applied, like the one under consideration. In view of the fact that no one individual can cope with all these railroad companies, the act to regulate commerce provides that a proceeding may be prosecuted by an association like the complainant in this case. To institute such a suit a sworn complaint is filed, setting forth the grievances complained of. When this is received at the office of the Commission a copy is served upon the various defendant railroad companies against whom complaint is made, and they are required to file an answer, also under oath, to the complaint. If an issue of fact is presented by the allegations in the complaint and the allegations in the answer, a trial of that issue is had before the Commission. Upon this trial testimony may be given, either by the production of witnesses or by deposition. If witnesses are produced, their testimony is taken down verbatim and afterwards reduced to writing. In a word, the trial of this issue

of fact is conducted before the Commission exactly as an issue of fact would be tried before a court in a judicial proceeding.

After the testimony is completed, the case is argued, precisely as it would be before a court, and then, from a consideration of the testimony, the Commission decides whether or not the complaint is sustained.

It is not, of course, intended to express any opinion in the present instance as to the merits of this particular controversy, but it may be assumed, for the purpose of the illustration, that the Commission is of opinion that the complaint is well founded, that the present rate of 22 cents is unreasonable, and therefore in violation of the statute, and that a rate of 17 cents would be reasonable. Now, the power which the Commission asks is to compel the carriers to charge for the future what has been determined to be a reasonable rate. It will be seen later that the decision of the Commission can be reviewed in the various courts of the United States, going in most cases to the Supreme Court.

This is the only power over rates which the Commission asks for, and this is not the power to make a rate, but the power to correct a rate when it has, with every formality, been determined to be wrong and unreasonable. The carrier makes, publishes and puts in force its rates, and with this the Commission can neither by direction nor indirection interfere. It is only when the Supreme Court of the United States has declared, if the carrier elects to carry the case there, that the rate established by the carrier is unreasonable and that the rate suggested by the Commission is reasonable, that the latter rate can be put in force. This is the "rate-making power" which has been paraded before the country, which is to wither up our commerce and destroy our energy. This is "imperialism," "unmitigated imperialism," and of the "populistic type" at that.

Now, why is it necessary that the Commission should have power to compel the carrier to charge this rate for the future? Because in no other way can the provisions of the act to regulate commerce be made effective. The first section of that act declares that all rates shall be just and reasonable, and without the power to compel the carrier to charge a rate which is just and reasonable the benefit of that prohibition cannot be secured to the public.

In the case under consideration the complainant asks an order for reparation. That is to say, it asks that the defendant railroad

companies shall be compelled to repay to the various members of the association whatever sums have been exacted over and above a reasonable rate, in this case the difference between 17 cents per hundred pounds and 22 cents. Why does not this afford a complete remedy?

The Interstate Commerce Act provides that in case a person is damaged by a violation of that act, a suit for such damages may be begun either before the Commission or directly in the Circuit Court. In reference to the rates under consideration, certain persons, being in reality the same who are conducting the prosecution before the Commission, did bring suit the proper circuit court for the recovery of the excess over and above a reasonable rate in case of shipments made before the filing of the complaint. The court in that case has recently held that the action will not lie, that the published rate is presumptively a reasonable rate, and that the shipper cannot maintain an action to recover any part of that rate which he has paid. As the law stands to-day, therefore, there is absolutely no remedy for the exaction of an unreasonable freight charge. The Commission has no power to compel a reasonable rate for the future, and neither the courts nor the Commission have power to award damages for the exaction of an unreasonable rate in the past. Although the statute of the United States expressly declares that rates shall be just and reasonable, the carrier can with immunity in interstate traffic impose and collect without responsibility to anyone whatever rate it sees fit.

Let us assume, however, that the decision of the Circuit Court in that case was wrong, as may possibly turn out after years of litigation, and that reparation can be awarded. Does that afford a remedy?

The complainants in the case under consideration are grain shippers, not grain producers. They buy from the farmer and sell upon the market, and this is the method by which the farmer ordinarily disposes of his grain. The price of grain in that country is determined usually by the Chicago market and the freight rate. If the freight rate is advanced, the price to the farmer is reduced. If the freight rate is reduced, the price to the farmer is advanced. In the present case, if the rate were reduced 5 cents per hundred pounds, wheat at Sioux City would be worth approximately 5 cents per hundred pounds more. The rate is not, therefore, a matter of much consequence to the shipper, since the price he pays is deter-

mined in view of whatever that rate may be. The loss ultimately falls upon the producer.

The only one who can recover an excess in the freight rate from the carrier is the one who has paid it. The farmer does not pay for it. Therefore he can recover nothing. A moment's consideration shows that with reference to the damage already done there can be no adequate remedy. The only substantial relief is to correct this rate for the future.

It is said that railway rates are not at the present time unreasonably high, and that there is therefore no occasion for a law by which they can be made lower. Assuming that rates in the aggregate are too low, it does not by any means follow that individual rates are not too high. The reduction of rates hitherto has been accomplished by the action of competitive forces, and those forces have not been equally active at all points. It results that while many rates are too low others are too high, and that one individual is making good the loss incurred by the railway in the service of some other individual.

Certain it is that complaints of this character are continually made. Such complaints have been habitually entertained and decided by the Commission in the past. There are now pending before it many cases in which the complaint is against the excessive rate. The reductions asked for in these cases would aggregate many hundreds of thousands of dollars annually. Without question, the complainants in the main honestly believe in the justice of their contention. My claim is that so long as the statute prohibits an unreasonable rate, and so long as shippers, including whole sections of this country, declare that unreasonable rates are exacted, there should be some tribunal which can entertain and decide that question, and, if the complaint is established, administer adequate relief.

It is not, however, alone, nor in the main, in the correction of the excessive rate that this power must be exercised. The third section provides that railways shall grant no undue preference to any person, locality, or commodity. Perhaps the most frequent complaint in the matter of rates is that they violate the provisions of this section, and it is even less possible to correct violations of this kind without the power to establish a rate for the future than to correct an excessive rate.

For the purpose of illustrating this, I will take an informal

complaint which has been made to the Commission. By this is meant a complaint which has been received, but which has not assumed the form of a litigated case.

It is a matter of history that the Standard Oil Company in the past has received from various railroads enormous preferences. One of the things which led to the enactment of the Interstate Commerce Law was the hope of restraining preferences of that kind. It is charged, however, that such discriminations, though in a different guise, still continue.

The Standard Oil Company has large refining works at Whiting, Ill., near Chicago. Several large independent refiners are located at Cleveland, Ohio. Whiting takes the Chicago rate. The rate on most articles from Chicago to New Orleans, for example, is about 8 per cent. lower than the rate from Cleveland. Linseed oil takes from Chicago to New Orleans the rate of 26 cents per hundred pounds, and from Cleveland to New Orleans the rate of 28 cents per hundred pounds. Petroleum and its products seem to be an exception. The rate on that kind of oil from Chicago is 23 cents and from Cleveland 31 cents per hundred pounds, being nearly 35 per cent. in favor of Chicago. The independent refiners charge that this discrimination practically excludes them from these Southern markets.

Now, it should be carefully borne in mind that no opinion is expressed in reference to this complaint. A freight rate is a peculiar thing, and what seems utterly inconsistent upon the face is often seen to be entirely proper when the facts are developed. That may be so in this case. It is quite possible that oil obtained from the earth should be subject to different conditions than that extracted from the seed of a plant. But it is also possible that the complaint is well founded. It is one of many of a similar nature. Let us assume that it is, that a formal complaint has been made, a formal trial had, and the conclusion arrived at that the discrimination exists. How under the law, as at present applied, can that discrimination be corrected? It must be remembered that the rate from Cleveland is made by one line and the rate from Chicago by an independent line. It might be thought that the rate from Cleveland is too high, but this is by no means necessarily true. That rate may be a just and reasonable one, and the iniquity may be in the fact that the rate from Chicago is unreasonably low in comparison with other rates. No suit can therefore be brought by

anyone nor any penalty inflicted upon anyone for an overcharge, because no overcharge exists. This injustice can in fact only be prevented by laying hold upon the rate itself and correcting that.

And what is the objection to investing the Commission with authority to prescribe this remedy ?

If two individuals enter into a certain kind of contract, a court of equity will compel a specific performance of that contract. Most railway charters grant the extraordinary privileges which they contain upon condition that the corporation shall become a common carrier for reasonable rates of toll. When the corporation accepts that charter and avails itself of those privileges, it impliedly agrees with the State that it will discharge the duties of a common carrier for a reasonable compensation. Now, if it insists, in violation of that obligation, upon an unreasonable compensation, is there any reason why the State may not specifically enforce that contract? It may be said that in most instances the charters have been granted by the State and that there is therefore no implied contract of that sort between the Federal Government and the railway, but so far as this interstate transportation is concerned, the State under our peculiar government surrenders its power to the nation, and that power may properly be exercised by the nation. Laying aside any consideration of that sort, however, assuming simply that the right of the national government extends to securing upon interstate shipments a reasonable and non-preferential rate, what objection is there to directly compelling the carrier to make that rate ? Does not such a method of procedure do exact justice to all parties, and is there any other which can ?

It is said that the power is a tremendous one. The freight rate may crush out an industry or stifle a community. A power of this extent ought not to be vested in any tribunal.

The power certainly is great, but is that a valid reason against its exercise? Shall a wrong be unrighted because it is a great wrong? When an individual or an industry or a locality finds itself in the tightening coils of a railway corporation, shall there be no relief ?

It is objected that the Interstate Commission is not qualified to deal with questions of rates. The suggestion seems to be that long experience in traffic matters is essential to an understanding of these subjects, and that no one not thus specially qualified can apprehend them.

Let it be carefully observed just what the function of the Commission is. That body does not make the rates. Experienced traffic managers still perform that duty. The Commission only sits in revision of those rates, and to inquire whether they are in violation of the Interstate Commerce law.

Railway rates are not made as a young duck swims, by instinct. The traffic manager can state the reasons upon which he has proceeded in a particular instance, and those reasons can be apprehended by a person of ordinary intelligence. That the present Commission is not qualified to cope with these subjects may be true, but that five men chosen, as this law contemplates, for their special fitness, exclusively occupied in the hearing of questions of this kind in all parts of the country, looking at the problem, not alone from the standpoint of the traffic manager, but from every standpoint, cannot intelligently consider and decide these questions, is absurd.

Certainly that tribunal would make mistakes. Every human tribunal, except a court of final resort, does that. But is not an adequate safeguard provided against those errors?

If the Commission, after the fullest investigation, has determined that the rate made by the carrier is in violation of the act and has ordered the carrier to so alter its rate as to bring it into conformity with the act, the railway company may review that order in the Federal courts, and the court may direct that the order shall remain inoperative during the pendency of such proceedings. These proceedings, in review, may be taken first in the Circuit Court, from thence to the Circuit Court of Appeals, and finally, if the amount in controversy exceeds $2,000, to the Supreme Court of the United States. In no case, therefore, where the result of the change is of the consequence of $2,000 to the carrier can the rate be changed if the Supreme Court of the United States is of the opinion that it is not "a legal, just and reasonable" one.

It is alleged, in the third place, that the power asked for in respect to the correction of rates is a new and a revolutionary power, never before seriously thought of in connection with the act to regulate commerce and which the Commission is seeking to arrogate to itself now for the first time.

The fact that this power is a new one, were that a fact, would not be conclusive against it. If the experience of ten years had

demonstrated that in no other way could the principles of the Interstate Commerce Act be enforced, that might afford a sufficient reason for bestowing even an untried authority. Such is not, however, the situation. This power is not new. It can be demonstrated that in the popular apprehension the Commission always possessed this power, that for the first five years of its existence the railways conceded its existence, and that from the first case in which its exercise was possible down to the 24th day of May, 1897, it was uniformly exercised by the Commission.

Mr. Walker, in his pamphlet above referred to, has stated with great emphasis that this authority is a novel one. The substance of what he says is that the Interstate Commerce Act conferred upon the Commission no power over rates and that no one at the time of its passage supposed that it did; that at first the Commission itself was in harmony with this view of the situation and disclaimed all authority to nominate rates, but that subsequently in the progress of events it began to seek such authority, when its aspirations were checked by the decision of the Supreme Court in May, 1897.

For the first eighteen months of its existence, Mr. Walker was a member of the Interstate Commerce Commission. An examination of the records and files of that body during that period will show that no authority over rates is asked for to-day, with a single exception, and that an apparent one, that was not either actually exercised by him during that period or the granting of which he did not recommend to Congress.

The act to regulate commerce became effective April 5, 1887, and the Commission very soon organized.

On the 15th day of June, 1887, complaint was filed by one Evans against the Oregon Railway and Navigation Company, charging that the rate of freight for the transportation of wheat from Walla Walla, in Washington Territory, to Portland, in the State of Oregon, was excessive. Testimony was subsequently taken in that matter, and the case was submitted October 12 and decided December 3, 1887. So far as I can ascertain, this is the first time the Commission ever held that a freight rate was excessive. The order in that case was:

"Now, it is ordered and adjudged by the Interstate Commerce Commission that on and after the 15th day of December in the year 1887 said defendant must cease and desist during the present grain season, namely on

and from the 15th day of December, 1887, until the 30th day of June in the year 1888, from charging and receiving more than twenty-three and one-half cents per one hundred pounds, or four dollars and seventy-five cents per ton, on wheat transported by it over its railroad lines from the city of Walla Walla in Washington Territory to Portland in the State of Oregon."

Here, then, in the very first case in which that could be done, a rate was prescribed for the future. All opinions and orders of the Commission are matters of record. The record in this case shows that Aldace F. Walker was present and participated in the making of the order.

One means of imposing an unjust freight rate is by an unjust classification of the freight. The rate upon first-class freight is more than upon second-class, and if an article which ought to go second class is classified as first class the rate, while a proper one for first-class articles in general, is too high as applied to that article. Therefore, in order to adjust that rate it is necessary to change the classification, and one of the powers asked for by the Commission is this.

January 13, 1888, the case of Reynolds vs. the Western New York and Pennsylvania Railway Company was decided. The complaint was filed October 17, 1887, and was that the defendants classified railroad ties as fifth class when they should be classified with lumber as sixth class, and that certain special commodity rates were given to lumber which were not given to railroad ties. The Commission sustained the complaint and an order was made directing the defendant for the future to classify railroad ties as lumber.

This was the first case in which an order of that kind could have been made. Mr. Walker delivered the opinion of the Commission and the record shows that he was present and participated in the making of the order.

The third power asked for by the Commission over rates is, in some instances, to determine the divisions of a through rate. The route between two points is often made up of connecting lines, and the rate by this line cannot be altered unless some one has power to determine in what proportions the different companies shall share in the total rate. It became evident pretty early that the omission to provide some such authority was a defect in the act itself, and in its second annual report the Commission presented to Congress a recommendation that it should be invested with this

power, which was manifestly necessary to carry out the contemplated purposes of the act. That report contained a proposed bill for the purpose indicated. The report was signed by Mr. Walker as one of the Commission, and I am informed upon credible authority that he himself prepared this bill. In an opinion delivered March 25, 1889, he said:

"The facts in the present case clearly develop the importance of such an amendment as shall provide a mode of procedure for carrying into effect the establishment of through routes and through rates and the equitable apportionment of the rates established, in cases where the refusal of such routes and rates works an unlawful preference. . . . The recommendations concerning amendments to the third section of the Act, which were made in the Second Annual Report, are therefore again renewed."

These three things, the fixing of a maximum rate, the changing of a classification, or what is analagous to a classification, and the determining of the divisions of a through rate in some instances are the only powers over the rate which are suggested in the Eleventh Annual Report, with the exception of the power to fix a minimum, as well as a maximum, rate whenever that is necessary to correct discriminations under the third section, and in no other case and for no other purpose.

It is apparent, therefore, that every substantial power over rates which the Commission asks for in its Eleventh Annual Report was actually exercised by it while Mr. Walker was a member of it. These powers which he now denominates "the most enormous ever conceived by the human intellect, . . . all the wildest advocate of a bureaucratic system could desire," were actually dispensed by him. The two important things to be observed are: (1.) That the fact as to the original understanding of the law is not as he states it. (2.) That during the six years following the passage of the act while these powers were assumed by the Commission and conceded in the main by the railways, none of the disastrous effects which he predicts followed. The commerce of the country was not dried up, nor were its energies prostrated. Upon the other hand, in these earlier days of the act to regulate commerce very great good was accomplished and many wrongs were corrected by the exercise of these very powers.

Mr. Walker says that at the time of the passage of the act no one supposed that it conferred the power to prescribe a rate for the future. It has been shown what the Commission and Mr. Walker himself, while he was on the Commission, understood in

that respect. How did the carriers view this question? So far as I can learn by investigation and inquiry, no doubt was ever suggested by them as to the right of the Commission in this respect for the first six years of its existence. Orders of this sort were for the most part complied with. In some instances they were resisted, but never upon the ground that the authority to make them did not exist. During all that time in no answer, in no argument before the Commission was existence of that authority questioned. This position was first taken in what is known as the Social Circle case, which was decided by the Circuit Court in 1893. The Orange Rate case, in which the decision that no such power existed was finally made by the Supreme Court of the United States, was tried first before the Circuit Court and then before the Circuit Court of Appeals before being taken to the court of final resort. In both of these inferior courts the railways were represented by able counsel and the cases were stubbornly contested, and yet in neither the Circuit Court nor the Circuit Court of Appeals was this question raised. It was only presented in the Supreme Court after it had had been first suggested in the cases above referred to.

The same remarkable change of views is observable in the opinions of Dr. Nimmo. To-day no language is severe enough to characterize the rate-making aspirations of the Commission. In 1893, the Patterson bill, so called, being under consideration, and it being suggested that perhaps in connection with that bill, which permitted pooling, the Commission ought to be given power over the rate in the first instance, Dr. Nimmo appeared and testified before the House Committee. The following is an extract from that testimony as printed:

"SENATOR CHANDLER: **Let me ask you if it is your idea that it will be suicidal paternalism to allow the Interstate Commerce Commission to fix reasonable rates in the beginning?**

"MR. NIMMO: **Yes, sir; I think it would.**

"SENATOR CHANDLER: **But you think it is entirely a legitimate governmental interference to allow them to reduce, if they can, exorbitant rates after they are once fixed?**

"MR. NIMMO: **Yes, sir; upon a complaint and hearing of the case.**"

But, as I have already shown, the only instance in which the Commission asks for the right to reduce rates is upon a complaint and hearing of the case. Dr. Nimmo, therefore, approved in express terms in 1893 what he declares in 1898 to be "unmitigated imperialism."

The criticisms of Mr. Walker and Dr. Nimmo are significant as indicating the attitude of certain railways, not perhaps a majority, toward the proposed legislation. That attitude and the reason for it are not difficult to understand. Originally the railways naturally opposed the passage of this law. When it became evident that some measure of the sort would be enacted, the object was to make it as harmless as possible. Several great railway systems suffered a change of heart, and were not only ready to admit that there ought to be such a law, but even to suggest what it ought to be. Some acute lawyer was ready to suggest at every vital point an innocent-looking amendment. The result was that, while the general principles of the law were broad enough, no sooner was an attempt made to enforce those principles than defects began to appear, and the climax was reached when the court decided May 24, 1897, that the act gave no power over the rate, and therefore that there was no way in which the provisions of the first and third sections could be made effectual.

The bill of the Commission, so far as the rate-making power is concerned, simply aims to provide a way in which the provisions of those two sections can be enforced. The astute railroad representatives of this country saw at a glance that that issue could not be met. Hence the endeavor to spread abroad the idea that this is a new notion, that these are new powers, dangerous in their exercise and at variance with the genius of our institutions, and so persistently has all this been circulated that many people have come to actually believe it.

The real issue, however, is regulation or no regulation. Occasionally a railway manager is found frank enough to admit this. One of the most earnest opponents of these proposed amendments is Mr. Milton H. Smith, President of the Louisville and Nashville Railroad Company. Some time since Mr. Smith testified in a matter pending before the Commission, and in the course of that testimony took occasion to give his views upon the situation. He has published and circulated in certain quarters that testimony. The following brief extract is given here:

"COMMISSION: We exercise no authority over your rate until it has been determined by investigation that that rate is an unreasonable one. Your objection comes to this, that there ought to be no authority anywhere which has power to inquire whether a rate on the Louisville & Nashville Railroad is reasonable or unreasonable? . . .

"MR. SMITH: That is my position.

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"COMMISSION: Now, let us go back to our question. That is the foundation of it all. Here are these two points connected by your line of railroad and connected by no other line. You say that the Government ought to leave you and the shipper who resides at those places free to contract. Now, that shipper is obliged to pay whatever you charge?

"MR. SMITH: No.

"COMMISSION: What could he do?

"MR. SMITH: He could walk; he can do as he did before he had a railroad, as thousands now do who have not railroads."

Exactly. Let the people walk.

Put alongside of this the latest utterance of the Supreme Court of the United States in disposing of the Nebraska freight rate cases March 7, 1898:

"It cannot therefore be admitted that a railroad corporation maintaining a highway under the authority of the State may fix its rates with a view solely to its own interests and ignore the rights of the public."

Here is presented in the statements of Mr. Smith and Mr. Justice Harlan the real controversy. If Mr. Smith is right, then the law as it now stands is right. If Mr. Justice Harlan is right, then the law at present affords no protection to the public, for its only remedy to-day is to walk.

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